Previous References 1927-28 (Land).

File No. 26-27

Serial Nos. 1—15

Later References
Law 105-28, 1.

P

General and Revenue Secretariat.

Serial Nos.

Part B for Dec 27

SUBJECT

Civil Suit-against Head Thrift C.. Lakshman Narayan Rao— re Balance Defalcation Case for Rs. 50,000/-.

7/11/27
15/11/27

GENERAL AND REVENUE SECRETARIAT.

NOTES. Laws File. No. 26

FILE HEADING.

Civil Suit against accused 3 in Palace Defalcation case for Rs 50 000/

From Public Prosecutor, Mysore.

No. 2887/27-28 Dated 12-11-27 Received 14/11/27

Diary No.	Enclos.	Spare Copies.	Serial No.

BRIEF ABSTRACT OF LETTER.

States that Huzur Secy ordered that a Suit be pfd against head Shrff C. S. Lakshmi Narayan Selly - accused 3 in Palace defalcation - Case - a pfl of Special 1st class Magistrate - Mysore and forwards a draft plaint for approval.

NOTES AND ORDERS.

Secy's orders on P.D.

"I have perused the draft plaint - it is all right - It may be fded at once & order of attachment obtained before Judge tomorrow only".

NOTES—First Sheet. Draft and pair subd.

WD 1881—GPB—30,000—1-8-21

Issued Ro (P 24980) d 14-11-27

14.11.27.

Subd to Asst Secy for perusal

Sus. A 15/11/11 15/11 8/11/11

General and Revenue Secretariat.

Law File No. 26 of 1927.

Serial No.

3

Letter from PPr mysore No: 160 of 28 29 dated 28th August 1928 forwarding a Draft reply reply statement for approval ---Two points arise for consideration: viz ..1) whether the plaintiff namely Mr. V. Thumbu chetty, Huzur Secretary has no locus Standi to file the suit? and 2) What is his legal position in filing it in his own name- ... ...

The suit is for recovery of certain amounts alleged to have been misappropriated by the defendant- when he was the Head Shroff of the Palace Treasury. The suit is filed by Mr. Thumbu chetty as Huzur Secretary & having in that capacity the Control of the affairs of the Palace. The defendant raises the contention in para 1 of the written statement that the plaintiff has no right to sue. In the draft reply statement, the PPr controverts this position and the authority on which the PPr strongly relies for coming to the conclusion that the Huzur Secretary as such can file this suit is the statement in 7 Halsbury page 276, where it is stated thus:—

"Suits by the Crown relating to Crown private estates not vested in trustees, wherever situate, and proceedings by the Crown relating

NOTE—Contn. Sheet.

WD 01714—GPB—30,000—18-4-28

General and Revenue Secretariat.

Law File No. 26 of 1927

Serial No.

to any debt or claim respecting the privy purse or any private personal estate subject to disposition by will, may be brought in the name or names of the person or persons appointed from time to time in writing under the Sign manual.

But this is the law in England by virtue of a Statute called the Crown Private Estates Act 1862 (25 & 26 Vict. C 37) sec 11 and the same Act of 1873 (36 & 37 Vict C 61) sec 3).

In mysore, in the absence of such an enactment, the procedure as regards suits must be governed by the C.P.C. and order 3 rule 2 specifies who the recognised agents are who can act on behalf of any person. Such an agent must be one holding a power of attorney when the person on whose behalf he acts resides within the local limits of the jurisdiction of the Court.

Since all the rights relating to the palace rests in His Highness, he is the person who has the right to sue in this case; and the Huzur Secretary can only act as his agent. I think he may be appointed as an agent to recognised agent under the C.P.C. by an order of His Highness, which may be construed as a power of attorney as required by order 3 rule 2. This will obviate all

NOTE—Contn. Sheet.

WD 01714—GPB—30,000—18-4-28

1258

Palace Civil Suit 12/

O & of 27.28

App. F. III—2] 5

General and Revenue Secretariat. | Law File No. 26. of 1927.

Serial No.

Submitted to L.R. with reference to the last para of the P. II A

DOP 13.9.28

I shall see him

15/9

Law 14/9

Secy DOP 15.9.28

Letter No 912 dated 14.9.28 from the Secy requesting to arrange for the L.A appearing in Mis A no: 73 of 28.29 filed by the defendant in the suit.

Draft to L.A put up: the appeal lies is from the order of attachment before judgt.

DOP 18.9.28 Asst 18/9

(L.R.)

19/9

appd. A fee of Rs 50 may be fixed

21/9

May the Asst. Secy see?

Asst 21/9 3rd Member

21/9

31/9 21/9

To the Govt Advocate

No P 808 Dy 24.9.28.

Request to appear & behalf of the Hon'ble Secy & States that his fee is fixed at Rs 50/-

NOTE—Contn. Sheet.

WD 01714—GPB—30,000—18-4-28

1403

7

App. F. III—2]

General and Revenue Secretariat. | Law File No. 46 of 192

Serial No.

~~Submitted to K.K.~~ The modification suggested in the 1st para of the reply statement may be approved.

Submitted for orders

mf
25-9-28

Draft letter as appd
Regd
29-9.

Draft put up
mf
29.9.28

agreed
29/9

9 To the Public Prosecutor Mysore
DO P/1994 DJ—10-28
Returns the Power of attorney and states that it is in order

Sus.
mf
8/10/28

10 From the Govt Advocate
No 319 dt 18/22-10-28.
States that the judgment in this Appeal No 3 of 1928-29 on the file of the Chief Court of Mysore was pronounced dismissing the Appeal
Submitted for perusal. A copy of the judgment will be awaited

23/10

Sus
mf
27/10/28

NOTE—Contn. Sheet.

WD 01714—GPB—30,000—18-4-28

General and Revenue Secretariat

Leave File No. 26 of 1927

Serial No.

To the Huzur Secretariat
No. P 2901 dt 28-11-28
Forwards for necessary action the bill for Rs 50/- received from the Govt Advocate for services rendered in the case.

File B. ~~500~~
mnf
28/11/28

No. 2970 dated 5/12/28 from the Revenue Secy intimating that the bill of the G.A has been paid
asst Secy's order.
" File with the connected papers.
Sd N.S 6/12/28.

B
mnf
6/12

NOTE—Contn. sheet

WD 021—GPB—30,000—21-8-28

APP. F. VI. Gl.]

UBJECT.....

.....

.....

Enclosure 1

Section

File No.

Serial No. 2

No. 9498 (2)

Diary No. of letter replied to .....

General and Revenue Secretariat

( )

the *192*

To

The Public Prosecutor.

Mysore Division

Mysore.

Date of issue 19/11/27

Signed by M. B. N. Sri

With reference to your D.O

no 288 27-28 d. 12-11-27.

forwarding a draft plaint for

~~Sanctioning~~ the filing of a civil suit for

Recovery of Rs 50000/- from Headthrott

C. S. Lakshminarayana Shetty, who is

3rd accused in the Palace Defalcation

Case, on the file of Special First Class

Magistrate-cum-. Mysore, ~~forwarding~~

~~a draft plaint~~, I have the honour

to return the same after perusal.

It is all right, it may be filed along

with orders of attachment before

judgment - obtained tomorrow.

over

List of enclosures.....

Copied by Dy. 14-11-27.

Examined by .....

WD 0562 -GPB—31,000—17-8-25

only.

Immediate + compendious

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated. Bangalore. 14/11/1927

No. 12498(1)

26-27-2

From

B. NAGAPPA, Esq., Bar-at-Law.
Secretary to the Government of His Highness the Maharaja of Mysore,
Law Department.

Legal Remembrancer and

To

The Public Prosecutor,

Mysore Division, Mysore.

Sir,

With reference to your D.O. No. 288 of 27-28 dated 12th November 1927 forwarding a draft plaint for the filing of a Civil Suit for recovery of Rs.50,000/- from Head Shroff C.S. Lakshminarayana Shetty, who is 3rd accused in the Palace Defalcation case, on the file of Special First Class Magistrate Court, Mysore, I have the honour to return the same after perusal. It is all right, it may be filed at once and orders of attachment before judgment obtained tomorrow only.

I have the honour to be,

Sir,

Your most obedient servant,

Legal Remembrancer and
~~For~~ Secretary to Government,
Law Department.

CONFIDENTIAL.

4386
F 8 5
26-27-1

From

Mr. M. Sreenivasa Iyengar, B.A., B.L.,

Public Prosecutor & Government Pleader,

MYSORE.

To

B. Nagappa Esq., Bar-at-Law.,

Legal Remembrancer and Secretary to Governm

Law Department, BANGALORE.

Dated 12th November 1927.

D.O. no., 288 of 27-28. Enclosure:- One draft plaint

Subject:- Regarding the filing of a civil suit for the recovery of Rs 50,000/- from the Head Shroff, C.S. Lakshminarayana Shetty, who happens to be the 3rd accused in the Palace Treasury Defalcation case, going on before the court of the Special First Class Magistrate, Mysore.

Dear Sir,

I was required yesterday by the Huzur Secretary to file a suit immediately against Head Shroff, C.S. Lakshminarayana Shetty, for the recovery of Rs 50,000/- I ~~have~~ drafted the herein enclosed plaint yesterday alone, and sent the same yesterday to the Huzur Secretary through the Assistant Secretary for approval. I have just now received the enclosed plaint duly approved.

As the matter under reference is a very important one, I have thought it necessary to send the plaint for your kind scrutiny and thereby have the benefit of your suggestions or instructions, if any in the matter. You will please therefore peruse the plaint and let me know your opinion. The draft of the plaint that is now sent may kindly be returned along with your valued opinion. As the Huzur Secretary wishes that no time should be lost in the filing of the plaint and in securing an attachment before judgment immediately after the institution of the suit, you will please deem this matter as urjent

and favour me with an immediate reply.

Thanking you in anticipation,

Yours Sincerely,

M. Srinivasa Aiyangar

Public Prosecutor & Government Pleade

Mysore.

draft and fair Sebd.
Abdul
14.11.27. Issued as P2498(1) dl 14/11/1927

D.O.no., 180/28-2[illegible]

Mysore.

Dated 5th Sept. '28

CONFIDENTIAL'

4

Dear Sir,

May I bring to your kind notice that my confidential communication no., 160/28-2[illegible] dated 28th August 1928 regarding your approval of the reply statement that had to be filed on 4-9-'28, remains still unanswered. The case came on for hearing yesterday and on the ground that I had not received your instructions and approval, I got the case adjourned to 18-9-'28. May I request you to be good enough to favour me with your valued opinion, as early as practicable, as the reply statement will have to be filed on the 18th.

P.T.O.

Thanking you in anticipation,

Yours Sincerely,

M. Venkata Rangaiya

Public Prosecutor & Govt.

Pleader, Mysore.

To

B.Nagappa Esq., Bar-at-Law.,

Legal Remembrancer &

Secretary to Government,

Law Department,

Bangalore

From

The Public Prosecutor,

Mysore Division, M y s o r e.

6

To

B.Nagappa Esquire, Bar-At-Law.,

Legal Remembrancer and Secretary to Government,

Law Department, B a n g a l o r e.

Dated 28th August 1928

D.O.no., 160 of 1928-29. CONFIDENTIAL.

Enclosures copies of plaint, written statement & Reply statement.

Sir,

I have the honour to inform you that the Civil suit filed against Ex-Head Shroff C.S.Lakshminarayana Setty, for the recovery of Rs 60,000/-, comes on for hearing on the 4th of September 1928, and on this date, we are to file our reply to the written statement filed by the defendant. Out of the several pleas advanced by the defendant, the only plea about which, I solicit your instructions and advice is the first ground of attack, viz, "The plaintiff in the case has no'locus standi' to file this suit. He has no right to sue".

In this connection, you will please note that in the plaint (copy of which I have enclosed for perusal and return along with the copy of the written statement), I have described the plaintiff as Mr.T.Thumboo Chetty, Huzur Secretary. The first para of my plaint runs thus:- "That the plaintiff is the Huzur Secretary and <u>as such</u> is in charge of the affairs of the Palace". In para 7 of the plaint, I have further stated that "with a view to defeat the decretal rights of the plaintiff, even in the event of there being a decree <u>in favour of the Palace</u> there has arisen the necessity to file the present suit"etc.

Thus, it is clear from the above averments that Mr.T.Thumboo Chetty files the suit and figures as plaintiff, not in his individual capacity, but because he happens to be the Huzur Secretary. And as Huzur Secretary, my contention is that though the Palace Establishment, consists of 28 departments, with departmental heads, styled either as Bakshis or Moktesars, yet the chief controlling authority is the Huzur Secretary, as it is he that exercises control over the several departments and guides the several departmental heads, in all matters pertain-

ing to the working and management of the Palace.

All the authority that vests at present in the Huzur Secretary was being exercised formerly by the Palace Controller. The said officer was advisedly called the Palace Controller, as he was clothed with the authority to control the internal management and the finances of the Palace. In fact, as the Palace records would show, it was the Palace Controller that received all moneys due to the Palace, and paid out all moneys, in his own name, due by the Palace. It was in the Palace Controller's name that all moneys belonging to the Palace were deposited in the several Banks. In short, all cheques were issued for and on behalf of the Palace, by the Controller, and vice versa, all cheques in favour of the Palace, were invariably drawn in the name of the Palace Controller.

The Palace Controller for the time being was the officer that managed the internal management of the Palace. He occupied the position of the chief governing and controlling authority, in all matters connected with the Palace. There is not a single instance, or occasion, in which His Highness has personally acted, without the medium of the Palace Controller. After the late Mr.Ramakrishna Row's retirement, the office of the Palace Controller was abolished, and all the powers that were being exercised by the Palace Controller, were transferred to the Huzur Secretary and thereafter the Huzur Secretary became the controlling authority in all matters connected with the Palace.

Matters being as above detailed, there can be no doubt that when the Palace has been defrauded and when the defendant, being entrusted with cash, as Head Shroff, broke faith and dishonestly and fraudulently misappropriated or connived at the said misappropriation, the person that is legally competent to seek redress in a court of Law, for re-imbursement is, in my humble opinion, the Palace Huzur Secretary.

The fixed annual sum, which a Soverign gets from the State revenues, is known as the Civil list. This is intended to meet the various heads of expenditure required for the maintenance of the Royal household, the privy purse and of certain members of the Royal family. In addition to this our Sovereign enjoys in his body natural, as distinct

from his body politic, certain revenues from his private estates. Thus the amount got as Civil list and the income from the private -- personal estates of our Sovereign, are entrusted to the care of the Huzur Secretary, who is the officer that controls and manages them. The department that is concerned with the above function is the Palace Office.

The Palace Office, as already stated, consists of 28 departments. Though each department has its own departmental head, yet the central and controlling authority that supervises and guides the due working of all the Palace departments, is the Huzur Secretary, who is a public officer, but selected and appointed by our Highness, to look after his household management.

According to Halsbury's Laws of England Volume VII page 276, suits by the Crown relating to crown private estates, not vested in trustees, and proceedings by the crown relating to any debt or claim respecting the privy purse or any private personal estate, subject to disposition by will, may be brought in the name or names of the person or persons appointed from time to time in writing under the sign manual; and all suits and actions respecting private estates at the suit of other parties may be sued and carried on by summon or process directed against the persons so appointed.

In accordance with the above observation, there have been suits filed by the Huzur Secretary for recovery of moneys due to the Palace and vice versa. Vide O.S. 274 of 1920-21 Palace Huzur Secretary VS. Mohadin sab and another on the file of the First Munsiff; Mysore; O.S.no., 572 of 1921-22 Huzur Secretary VS N.Krishnaswamy Row on the file of the First Munsiff's court; O.S.no., 26 of 1916-17 Vardhamana Pandit VS. Palace Controller on the file of the District Judge, Mysore; O.S. no., 360 of 1914-15 Krishna Shetty VS. Palace Huzur Secretary on the file of the Second Munsiff's court, Mysore; O.S.no., 37 of 1920-21 Chikka Hanuma Boyi VS. Mr.Marker on the file of the Sub-Judge's court, was one in which the plaintiff sued for recovery of money due to him from the Palace Maramat Department, and the Huzur Secretary wrote to the Sub-Judge that the Palace would defend the ~~defendant~~ suit and pay the costs of litigation. Accordingly when a decree was finally passed, it was the Palace

Huzur Secretary that satisfied the decree by sending the decretal amount to the court.

So, I am inclined to the view that the Palace Huzur Secretary is legally competent to file the suit under consideration.

The next point for anxious consideration would be:-what is the legal position of the Huzur Secretary in filing the suit in his own name ? Has the Huzur Secretary filed the suit as the appointed or recognized agent of His Highness for the recovery of moneys due to his personal estate; or has the Huzur Secretary filed the suit, by force of his office, as ~~having~~ being one entrusted with the responsibility control and management of of His Highness's private estates and as such bound in law to account to his master, for the due performance of his duties as Huzur Secretary and also bound to take such action as may be found necessary to recoupe the loss caused to the personal estates of his master. I want you to give me the benefit of your clear and specific instructions regarding the above.

Of course, if once we concede that the Huzur Secretary is the accredited agent of His Highness in matters pertaining to his personal estates, the suit now filed would in law be a suit by an agent on behalf of a principal. Section 85 C.P.C. would be applicable to such suits when they are filed in British Indian courts. Section 87 says that a Sovereign Prince or Ruling Chief, may sue, in the name of his State But in our Civil Procedure Code Regulation no., III of 1911, sections 83, to 87 force in British India, are deleted. I am aware of the fact that it is the inherent privilege of the Crown to choose its own forum and sue in what court it pleases and though there may be other prerogative remedies available, yet the crown may resort to the usual forms of action.

But in my humble opinion, the introduction of the relationship of an agent and principal between the Huzur Secretary and His Highness, may complicate the issues and necessitate the amendment of the title and frame of the suit. The title and frame of the suit, should then be plaintiff-His Highness the Maharaja of Mysore, by his agent the Palace Huzur Secretary. But if the alternative view that I have suggest-

A. P. F. VI. G1]

9

SUBJECT.....

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Section Law

File No. 26-27

Serial No. 3

Diary No. of letter replied to.....

No. 1558 54

General and Revenue Secretariat

( )

the *192*

To The Public Prosecutor

Mysore

Date of issue 11/9/28

Sir,

Signed by M' NS

With reference to your letter regarding the reply statement in the Palace O.S. 8822-27 Civil Suit in the District Court Mysore, I have the honour to send herewith my considered opinion in the matter you may show it to the Hizur Secretary and get the necessary orders passed.

Thareek

List of enclosures.....

Copied by .....

Examined by .....

Legal R

over

1245 pfs

Mysore. 10

D.O.no., 201/28-29 SL 4 Dated 12th Sept.'28

Dear Sir,

I have the honour to acknowledge with thanks. the receipt of your valued opinion regarding the reply statement in the Palace Civil Suit O.S.no., 8 of 27-28 of District Judge's court, Mysore. I have this day addressed a communication to the Huzur Secretary and I have sent a true copy of your opinion to him.

The copies of plaint and defence statement along with the draft reply statement sent to you on 29-8-28 with my D.O.no., 160/28-29 have not been returned to me. They may be kindly caused to be returned early.

I shall be glad to have a personal discussion with you on Sunday afternoon, after I arrive at Bangalore, by the 12 O'clock train, say at about 2 P.M.

I have the honour to be
Sir,
Your most obedient servant,

Public Prosecutor & Govt.Pleader,
Mysore.

To
B.Nagappa Esq., Bar-At-Law,
Legal Remembrancer & Secretary to Govt.,
Law Department, Bangalore.

11

A, P. F. VI. G1]

SUBJECT.....

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Section Law

File No. 26-27

Serial No. 5

No. GL 601 Enc 3

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the 192

To The Public Prosecutor
Shimoga

Date of issue..... 13/9/28

Signed by..... W' NS

Sir,

With reference to your letter ~~D.O.~~ No: 201 of 28-29 dated 12th September 1928, I am directed to return herewith the copies of the plaint & defence statement as also the draft reply in O.S. 8 of 27-28 in the District Court, Mysore

List of enclosures.....

Copied by .....

Examined by .....

I have ck

M

for Secy to Govt

Law Dept

MP

over 13/9/28

WD0325—GPB—30,000—26-5-27

1256/2824

The Palace, Mysore,
14th September 1928.

No. 912

12

sl 6

FROM

THE HUZUR SECRETARY
TO HIS HIGHNESS THE MAHARAJA OF MYSORE.

To

The Secretary to the Government of His
Highness the Maharaja of Mysore,
Law Department, B a n g a l o r e.

M 1879
Law
1879

Sir,

I have the honour to state that C.S.Lakshminarayana Setty late Head Shroff, Palace Treasury, against whom a Civil Suit (O.S.No.8 of 1927-28) has been instituted in the District Court, Mysore, for Rs 60,000/- in connection with the Palace Treasury Defalcation, has preferred an appeal to the Chief Court of Mysore (Mis.A.No.3 of 1928-1929) which is posted for hearing on the 1st October 1928. I am directed to request you to kindly arrange for the Government Advocate to appear in the case on the said date on behalf of the respondent Mr.T.Thumboo Chetty, Huzur Secretary to H.H.the Maharaja of Mysore.

I have the

Sir,

Your most obedient servant,

For Huzur Secretary.

1404/928

Mysore.

IMMEDIATE.

D.O.no., 228 of 28-29 Dated 24th Sept. '28

Enclosure:- 1 draft power of attorney.

Dear Sir,

I got your opinion regarding the Palace suit on the 12th of this month. You seem to incline to the view that all the rights relating to the Palace vest in His Highness and that His Highness is the person who has the right to sue in this case and that the Huzur Secretary can only act as his Agent. Further you are pleased to observe that the Huzur Secretary may be appointed as the recognized agent under C.P.C by an order of His Highness which may be construed as a Power-of-attorney as required by Order III Rule 2 C.P.C. In pursuance with your views and also in confirmation of my contention that the Huzur Secretary as such is competent to file suits on behalf of the Palace, I enclose herewith the draft of a Power-of-attorney which I intend to submit to the Huzur for Securing the sanction of His Highness the Maharaja. This, I think, will support both our views. If you should be inclined to think otherwise, I shall thank you to send me your own draft. I wish you will treat this as very urgent as the reply statement has to be filed on the 9th proximo without fail.

In the reply statement, I intend to modify the 1st para, in the following terms :-

1. "The contention of the defendant that the plaintiff in this case has no locus standi to file the suit and that he has no right to sue is untenable and unsound. The Huzur Secretary is the officer that is clothed with the authority to file suits on behalf of the Palace and also be sued by others in matters connected with the Palace."

This reply statement will, in my opinion, not merely substantiate my contention that the Huzur Secretary in charge of Palace affairs as such can file the suit but also has been authorized to do so by an order of His Highness. It may not be necessary to file in court the authority vouchsafed in favour of the Huzur Secretary by His Highness unless and until a specific order is made by the court to that effect.

Yours Sincerely,

To

B.Nagappa Esq.,Bar-At-Law.,
Legal Remembrancer &
Secretary to Govt.of Mysore,

Public Prosecutor & Govt.Pleader,
Mysore.

A. P. F. VI. GIJ

15

SUBJECT.....

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Diary No. of letter replied to.....

Section Loan

File No. 26-29

Serial No. 9

No. 1994(1)

General and Revenue Secretariat

)

the 192

To The Public Prosecutor
Mysore

Date of issue 7/10/28

Signed by... M V RS

Sir,

With reference to your letter No. 228/28-29 dated 24th September 1928 returning the Palace suit against C. S. Lakshminarayanaselti, I am directed to return herewith the draft power of attorney sent with your letter and to state that it is in order. The modification suggested by you of para 1 of the reply statement suggested by you

List of enclosures.....

Copied by

Examined by .....

over

WD0325—GPB—30,000—26-5-27

2135 28

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

In reply please refer to
No. 319

Tel. Address:
"JURIST," Bangalore.

Bangalore.....19th November.....*192* 8.

FROM

K. SHANKARANARAYANA RAO, ESQ, M.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

To

The Secretary to the Government
of H. H. the Maharaja of Mysore,
Law Department, BANGALORE.

SIR,

In continuation of this office letter No. 319, dated the 22nd October 1928, I have the honor to forward herewith - for the information of Government, a copy of the Order passed in Miscellaneous Appeal No. 3 of 1928-29 on the file of the - Chief Court of Mysore. (C. S. Lakshminarayana Setti, VERSUS. The Huzur Secretary to His Highness the Maharaja of Mysore).

I have the honor to be,

Sir,

Your most obedient servant,

Government Advocate.

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Thursday, the 18th day of October
1928.

PRESENT

MR. JUSTICE C. S. DORASWAMI IYER, CHIEF JUDGE,
and
MR. JUSTICE H. RAMACHANDRA RAO.

Miscellaneous Appeal No.3/28-29.

.. S. Lakshminarayana Setti, by Agent - C.S.Venkataramana Setti, Power of Attorney Holder. — Defendant ... APPELLANT.

(By Mr. A. R. Nageswara Iyer).

VS.

Mr. Thumboo Chetty, Huzur Secretary, Palace Department. — Plaintiff. ... RESPONDENT.

(By Mr. K. Shankaranarayana Rao).

Miscellaneous Appeal against the order dated - 2-8-1928 by the District Judge of Mysore in Original - Suit No. 8 of 1927-28.

This Miscellaneous Appeal coming on for hearing on Tuesday, the 9th day of October 1928, the Court pronounced the following:-

O R D E R.

This is an appeal against an interlocutory order of the District Judge of Mysore, in Original Suit No. 8 of 1927-28, making absolute, the ad interim order of attachment

attachment before Judgment already placed on the appellant's properties. The suit was for the recovery of Rs.60,000/- alleged to have been mis-appropriated by the appellant. It was filed on 30-11-1927. On the same date an attachment before Judgment of the movable - and immovable properties of the Appellant was prayed for. On the following day another application was made for the attachment of certain debts alleged to be due to the appellant of which a list was furnished. On 9-12-1927. a - third application was made for the attachment of some - more debts specified in the list appended and alleged to have been found since. An ad-interim order for attachment as prayed for was given and was in due course after - notice made absolute on 2-8-1928. This appeal is against the said order.

The main contention of the appellant's Advocate was that in the petitions and affidavits filed by the Plaintiff no tangible ground to entitle him to an order for attachment has been set out and that the allegations made regarding the defendant's attempt to dispose of the whole or any part of his property or to remove the same from the jurisdiction of the Court with intent to obstruct or delay the execution of any decree that may be passed against him are so vague and indefinite, that the lower court had practically no materials to proceed with. It was further contended - that the order of the Lower Court did not even set out whether it was satisfied with the grounds set out by the respondent before passing the order in question. It must be admitted that the brief order of the learned District Judge is not - very satisfactory and is open to the attack made by the appellant's Advocate. It does not set out them materials on which the order is based, or that the court was satisfied - that

that sufficient grounds existed which would lend support to the Plaintiff's allegation that unless an attachment was effected he would not be able to realise the fruits of his decree from the defendant if one were to be eventually passed. It is undisputed that before passing an order under Order 38, Rule 5, the Court must be satisfied that the defendant with intent to obstruct or delay the execution of the decree that may be passed against him is about to dispose off the whole or any part of his property or to remove the same from the local limits of the jurisdiction of the Court. In the affidavit filed by the Plaintiff on 30th November 1927, no specific acts of the defendant or of his attorney are alleged or any references to the conduct of either made from which reasonable inference to bring the case within the terms of Order 38, Rule 5 might be drawn; it is however mentioned in the affidavit that the general allegations made are true and were believed to be true. The second petition and the affidavit made in support of it do not give any more information that what the first application did, except the fact that a Power of Attorney was given by the Plaintiff to his brother C. S. Venkataramana Sotti, to collect the debts due and keep them out of the reach of the Plaintiff in case he should obtain a decree. If the matter had stood thus, we should have little hesitation in agreeing with the appellant's contention that a case for attachment before Judgment had not been made out, but certain facts have come to light in the course of the miscellaneous proceedings in the lower Court. They are these:-

(1) In the family partition, the defendant got for his share some 40 items of jewels of the value

value of Rs.8,767/- and 26 items of silver articles of the value of Rs.600/-; but when the Amin went to the defendant's place, only a few silver articles of the value of Rs.178-6-0 were found.

(2) Prohibitory notices issued to the various debtors did not meet with any ready response; on the other hand it was ascertained that subsequent to the institution of the suit the defendant's brother and attorney collected Rs.5.500/- from Cheluvachari and Rs.1,000/- from Armuga Mudaliar, two among the several debtors of the defendant. Another debtor Veeraraj Urs stated that he had paid back Rs.400/- out of a debt of Rs.500/-.

(3) In renewal of the Bond executed by another Mallaraj Urs in favour of the defendant, two documents were taken one in the name of the defendant's uncle for Rs.500/- and another in the name of the defendant's brother for Rs.400/-.

(4) Three debts which fell due on 12-8-1928, 26-8-1928 and 5-9-1928, were allowed to become time-barred in spite of the intimation given by the Plaintiff.

(5) The defendant's brother himself was proposed as Receiver of the defendant's estate, but he was unwilling to act unless the Plaintiff financed him.

(6) Two claim petitions were got filed, one on behalf of Defendant's wife, and another on behalf of his nephews. (These claims were eventually allowed).

It was stated that these and other facts which were brought to the notice of the Court in the Plaintiff's third

third affidavit gave him a reasonable apprehension - that unless the properties were got attached before Judgment, there was little chance of his realising - his decree if it was ultimately passed.

We are not prepared to say that in the above - circumstances the lower court committed any error in the exercise of its discretion in ordering attachment before Judgment and making it absolute in due - course. This appeal is therefore dismissed with - costs.

Sd/- C. S. DORASWAMI IYER,
CHIEF JUDGE.

Sd/- M. RAMACHANDRA RAO,
JUDGE.

Amount of costs payable by the Appellant (defendant) to the Respondent (Plaintiff) is:-

Advocate's Fee.	Rs.10-0-0.
Total.	Rs.10-0-0.

Sd/- N. B. SREENIVASA IYENGAR,
DEPUTY REGISTRAR.

Copy.

Government Advocate.

Appendix F G—1

21

SUBJECT.....

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Section Loan

File No. 26-27

Serial No. 12

Diary No. of letter replied to.....

No. 12884(1)

General and Revenue Secretariat

( )

the *192*

To

The Hon'ble Secretary to H. H.
the Maharaja of Mysore.

Date of issue 27/11/28

Signed. by .....

Sir,

With reference to your letter No: 912 dated 14th September 1928 regarding the Miscellaneous Appeal 3 of 28-29 filed by C.S. Lakshminarayanaiah, I am directed to forward herewith for your information a copy of the order passed by the Chief Court, dismissing the appeal with Costs. I am also to state that ~~the Government~~ Advocate a fee of Rs 50/- has to be paid to the Government Advocate, whose bill when received will be forwarded

List of enclosures.....

Copied by.....

Examined by.....

over

2282 P 28

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

In reply please refer to
No. 499

Tel. Address:
"JURIST," Bangalore.

Bangalore 26th November 192 8

27 5213 22

FROM

K. SHANKARANARAYANA RAO, ESQ., M.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

"
To

The Secretary to the Government of
H. H. The Maharaja of Mysore,
Law Department, BANGALORE.

SIR,

With reference to your letter No. P.1808/Law.26-27 dated the 24th September 1928 and in continuation of this office letter No. 386 dated the 19th November 1928, I have the honour to forward herewith, for the sanction of - Government, a Bill for Rs.50/- only being my remuneration for professional services rendered in Miscellaneous - Appeal No. 3 of 1928-29 on the file of the Chief Court of Mysore, (C. S. Lakshminarayana Setty VERSUS The Huzur

Secretary

Secretary to His Highness the Maharaja of Mysore).

I have the honor to be,
Sir,
Your most obedient servant,

GOVERNMENT ADVOCATE.

CSN.

Appendix F G—1

SUBJECT..... .....

.....

.....

Section Home

File No. 26-V

Serial No. 4e

No. 7290 (1)

Diary No. of letter replied to.....

General and Revenue Secretariat

(

the *192*

To

The Kuwar Secretary to His Highness
the Maharaja of Mysore

Date of issue..... 28/11/28

Signed by .....

Sir,

In continuation of this
office letter no: P 2884 dated
29th instant, forwarding
copy of the order passed by the
Chief Court in His Appeal
of 28.29, I am directed to
forward herewith, for necessary action
the bill
for Rs 50/- received from the
Govt Advocate for services
rendered in the case
~~for favourable action~~ ~~for kind sanction and payment~~

Thanks

List of enclosures.....

Copied by.....

Examined by.....

.....ordered to Govt
Dy over Land

29.11.28

G. R. S. III—3]

ROUTINE NOTES.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

File with the connected papers.

112/2430/P&S

PALACE OFFICE,

MYSORE,

No. 2970

Date 5-12-1928

24

To

The Secretary
to the Government of Mysore
Law Department,
Bangalore.

2282

Sir,

As requested in your letter ~~xx report~~ No. 2901 dated 28-11-28 a sum of Rs 50/- (Rupees fifty) has been paid to K. Shankaranaraya na Rao, Esq., M.A., B.L., ~~and debited to~~

I have the honor to be
Sir,
Your most obedient servant

For Huzur Secretary.

1422-28. The Bangalore Press

N. B.—Should routine notes be written on small slips the notes must be pasted on this form.